

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:CTM:SEA:POSTF-153198-01

GMHahn

date:

January 16, 2002

to:

IRS Team Coordinator (LMSB)

Fax Number: (208) 334-9653

from: Greg Hahn, IRS Counsel, LMSB Area 5, Seattle

subject:

██████████ Inc. and ██████████ Co., Form 872 and Form 907 Consent Language.

This memorandum responds to your request for assistance in preparing the Form 872 for ██████████ Co. (EIN ██████████) for the FYE 12/31/██████████ and the Form 907 for ██████████ Co. for the refund claims filed for the FYE 12/31/██████████, 12/31/██████████ and 12/31/██████████. This memorandum should not be cited as precedent.

ISSUE & SUMMARY CONCLUSION

Who is the proper party to sign the Form 872 for the taxable year ██████████ and the Form 907 for the taxable years ██████████, ██████████ and ██████████.

Both ██████████ Inc. and ██████████ Co. may sign the statute extensions. However, since ██████████ previously signed a Form 872 for the ██████████ taxable year, Counsel recommends that ██████████ sign the Form 872 and the Forms 907. These forms should be prepared as described below.

RELEVANT FACTS

██████████ Company ("██████████") is a ██████████ company. For the taxable years ██████████ through ██████████, EIN ██████████, was the common parent for a group of subsidiaries. During these years, ██████████ filed consolidated returns (Form 1120) as the common parent of the subsidiaries. In ██████████, Inc. ("██████████") (EIN ██████████) was incorporated as an ██████████ holding company. On ██████████, the publicly held stock of ██████████ was

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exchanged on a share for share basis for stock of [REDACTED]¹. [REDACTED] contends that the transaction was a mere change in form, that all of the assets of the consolidated group before and after the exchange were identical. Following the exchange, [REDACTED] became a wholly owned subsidiary of [REDACTED] and [REDACTED] became the common parent for [REDACTED] as well as the group of subsidiaries of which [REDACTED] was the former common parent². Following the transaction, ownership of various subsidiaries was transferred from [REDACTED] to [REDACTED].

On [REDACTED], [REDACTED] filed a [REDACTED] Form 1120 for the consolidated group. The [REDACTED] return list the name as "[REDACTED] Company." [REDACTED] and the IRS wish to extend this statute beyond its current expiration date of [REDACTED].

On [REDACTED], [REDACTED] filed amended returns (Form 1120X) for the taxable years [REDACTED], [REDACTED] and [REDACTED] to claim refunds of \$[REDACTED], \$[REDACTED] and \$[REDACTED], respectively. [REDACTED] identified its name on the [REDACTED] Form 1120X as "[REDACTED] Company & Subsidiaries." Counsel does not have information on how the name was identified on the [REDACTED] and [REDACTED] Form 1120x as copies of the returns were not provided to Counsel. These claims were formally disallowed in full on [REDACTED]. Pursuant to I.R.C. § 6532(a)(2), [REDACTED] and the IRS wish to extend the two year statute (which currently expires on [REDACTED]) for filing a refund suit.

LEGAL DISCUSSION & CONCLUSION

Based on the facts as set forth above, the [REDACTED] transaction appears to constitute a reverse acquisition. See Treas. Reg. § 1.1502-75(d)(3)(i)(b). Following the acquisition, [REDACTED] remained in existence as a wholly owned subsidiary of [REDACTED] with [REDACTED] becoming the new common parent of the consolidated

¹In a letter to the IRS dated [REDACTED], [REDACTED] contends that the [REDACTED]/[REDACTED] reorganization is similar to the reorganization in LTR 8822045. In LTR 8822045, following the transaction, the former common parent of the affiliated group (Target) continued in existence, Target became a wholly owned subsidiary of the holding company (Holding), and Holding became the new common parent of the affiliated group.

²On [REDACTED], [REDACTED] sent a letter to the IRS to designate, pursuant to Treas. Reg. 1.1502-77(d), [REDACTED] as the new common parent of the same consolidated group of which [REDACTED] was the former common parent. This designation was effective as of [REDACTED].

group.

In general, the common parent of a consolidated group is the sole agent of the group and is authorized to act in its own name in all matters relating to the tax liability for the consolidated return year. Treas. Reg. § 1.1502-77(a). Thus, the common parent is the proper party to sign consents, including waivers to extend the period of limitations, for all members in the group for all taxable years in which the corporation was the common parent of the consolidated group. Id.

Treas. Reg. § 1.1502-77(d) provides guidance in the context of a reverse acquisition as to who can act as agent for prior tax years where a consolidated group has continued with a new common parent. Treas. Reg. §§ 1.1502-77(a) and (d) imply that as long as the old common parent continues to exist following the reverse acquisition, it remains as the common parent agent for each year for which it was the common parent of the consolidated group. Thus, it is the proper party to act for all tax matters related to the consolidated group for those years that it was the common parent.

Temp. Treas. Reg. § 1.1502-77T also allows "alternative agents" to act for the consolidated group where the corporation that was the common parent of the group prior to the transaction ceases to be the common parent of the group following the transaction. This temporary regulation applies only to two prescribed acts: (1) the mailing of notices of deficiency and (2) the waiver of statute of limitations. Temp. Treas. Reg. §§ 1.1502-77T(2) and (3). In the situation where the former common parent continues to exist following the transaction, the term "alternative agent" includes (1) the common parent of the group for any year to which the notice or waiver applies and (2) the common parent of the group at the time the notice is mailed or the waiver is given. Temp. Treas. Reg. §§ 1.1502-77T(a)(4)(i) and (iv). Thus, either the old common parent or the new common parent can act for the consolidated group with respect to mailing of the notice of deficiency or the waiver of statute of limitations.

In the case at hand, since [REDACTED] continued to exist following the reverse acquisition, [REDACTED] can execute the Form 872 for the [REDACTED] taxable year as well as the Form 907 for the [REDACTED], [REDACTED] and [REDACTED] taxable years. Treas. Reg. § 1.1502-77(d). In addition, pursuant to Temp. Treas. Reg. 1.1502-77T(a)(4)(iv), [REDACTED] would be an "alternative agent" and would be able to act for the consolidated group with respect to executing the Form 872 and the Form 907. However, since [REDACTED] previously executed a Form 872 for the [REDACTED] taxable year, Counsel recommends that [REDACTED] and not [REDACTED] execute the Form 872 and the Forms 907. Counsel recommends that the Form

872 and the Forms 907 be completed as follows:

Taxpayer Name: [REDACTED] Company & Subsidiaries*

Signature Block³: [REDACTED], Inc.

Bottom of Page: *This is with respect to the [REDACTED]
Company & Subsidiaries consolidated group for
the taxable year [insert [REDACTED], [REDACTED], [REDACTED] or
[REDACTED].

The forms should be signed by a current officer of [REDACTED].

Should you have any questions in this matter, please contact
the undersigned at (206) 220-5954.

This writing may contain privileged information. Any
unauthorized disclosure of this writing may have an adverse affect
on privileges, such as the attorney client privilege. If
disclosure becomes necessary, please contact this office for our
views.

GREGORY M. HAHN
Attorney

³Please verify that this is the correct name and spelling for
[REDACTED]. If not, please contact our office prior to sending the
forms.